

The only issue before the Board on this appeal is whether claimant's accident is compensable under the Workers Compensation Act.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the preliminary hearing Order should be affirmed.

On December 28, 2005, claimant fell and injured himself as he exited respondent's building to go to lunch. Claimant fell only a few feet from the door. Respondent, which leased the entire building, was one of three tenants in the building. But the door claimant exited was only used by respondent's employees and required a card to enter. In fact, that door is the only door that respondent's employees may use in entering the building.

The record is not clear whether the stairs where claimant fell are specifically leased to respondent under the terms of the lease agreement, but respondent's site manager testified the landlord is responsible for maintaining the building's grounds, including those stairs. Nonetheless, respondent prohibits its employees from congregating in that area.

The term "premises" as used in K.S.A. 44-508(f) is a place controlled by the employer. An employee assumes the duties of his or her employment when at a place where an employee may reasonably be during the time he or she is doing what a person so employed may reasonably do during or while the employment is in progress.<sup>1</sup>

The Board finds respondent exerted sufficient control over the area where claimant fell that such area is part of respondent's premises. Accordingly, the premises exception to the going and coming rule of K.S.A. 2005 Supp. 44-508(f) applies and claimant's accident is regarded as arising out of and in the course of his employment with respondent.

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.<sup>2</sup>

---

<sup>1</sup> *Thompson v. Law Offices of Alan Joseph*, 256 Kan. 36, Syl. ¶ 1, 883 P.2d 768 (1994).

<sup>2</sup> K.S.A. 2005 Supp. 44-508(f).

Whether an area should be considered as part of an employer's premises is a question of fact. Here, claimant fell in an area where only respondent's employees would normally be found and in an area where respondent extended its authority. Accordingly, these facts are distinguishable from *Thompson*.<sup>3</sup>

The Board finds no persuasive reason to disturb the preliminary hearing Order.

**WHEREFORE**, the Board affirms the March 22, 2006, Order entered by Judge Howard.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 2006.

---

BOARD MEMBER

c: James E. Martin, Attorney for Claimant  
Samantha N. Benjamin, Attorney for Respondent and its Insurance Carrier  
Steven J. Howard, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

---

<sup>3</sup> *Thompson v. Law Offices of Alan Joseph*, 256 Kan. 36, 883 P.2d 768 (1994).